

GOVERNOR'S CONSUMER ENERGY PROTECTION TASK FORCE

Minutes of the Meeting April 23, 2004 Room 102, State Capitol Building Helena, Montana

ROLL CALL: The April 23, 2004, meeting of the Governor's Consumer Energy Protection Task Force was called to order by Chairman John Hines at 9:40 a.m., in Room 102, State Capitol Building, Helena, Montana. Members present were John Hines, Chairman, Commissioner Rob Rowe, Representative Alan Olson, Haley Beaudry, Chuck Swysgood, Tom Power, and Mike Uda. Mr. John Bushnell staffed the meeting.

Welcome and Introductions

Chairman Hines welcomed Task Force members and requested Commissioner Rowe to provide the Task Force with an update of NorthWestern Energy's (NWE) bankruptcy.

Status of NorthWestern Energy Bankruptcy--Commissioner Bob Rowe

Bob Rowe, Montana Public Service Commission, updated the Task Force on NWE's bankruptcy. Commissioner Rowe was encouraged with progress on short-term goals particularly in procuring a continued supply of energy and segregating bankruptcy-related costs from recovery from customers. Commissioner Rowe felt it was significant that NWE has acknowledged there will be no rate increase requested as a result of the bankruptcy. Commissioner Rowe identified the next milestone in the bankruptcy proceeding as the May 17, 2004, hearing on the Disclosure Statement, which was filed simultaneously with the Reorganization Plan. Commissioner Rowe explained the Disclosure Statement must be approved by the Court before the debtor can solicit support for the Reorganization Plan. The focus will be on financial feasibility and a predictable stream of revenue coming out of bankruptcy. Commissioner Rowe felt a revenue requirement case will be appropriate coming out of the bankruptcy. Ring-fencing issues have also been discussed, as well as corporate governance, capital structure, and attempting to ensure the company that emerges will have a focus on the Montana operation. Commissioner Rowe felt NWE's bankruptcy has been much more focused in comparison to other utility bankruptcies. The PSC will be filing an objection to the Disclosure Statement since if concerns are not filed at that time, the PSC will lose its right to file its concerns at a later date.

Commissioner Rowe stated there has been discussion about other parties who may want to acquire NWE's assets. The PSC is currently neutral as to these parties, and is looking into the ability of any of the parties to acquire the assets. Commissioner Rowe expects more concrete proposals to be made after the disclosure hearing, and noted a proposal could also be made after the bankruptcy. Therefore, Commissioner Rowe felt it was appropriate for the Governor's Task Force and the Energy and Telecommunications Interim Committee (ETIC) to clarify the PSC's authority over transactions.

Questions from the Task Force

Haley Beaudry asked for specific information about the disclosure hearing, and Commissioner Rowe responded the hearing would be on May 17, 2004, in Phoenix, Arizona, which is where the presiding bankruptcy judge resides.

Haley Beaudry recalled several former employees of NWE had filed documents claiming NWE owes them \$12 million in retirement funds and that claim will need to be settled prior to the bankruptcy. Commissioner Rowe stated there had been several attacks on the plan by creditors, shareholders, and employees. Commissioner Rowe added the current labor dispute must be resolved since there is a substantial amount of cash involved. Commissioner Rowe felt these types of issues are not unusual in a bankruptcy. Mr. Beaudry thought these claims could delay the bankruptcy by a couple of years, and Commissioner Rowe replied there are always a substantial amount of negotiations conducted in bankruptcy.

Upon request from Mr. Beaudry about offers received post-bankruptcy, Commissioner Rowe clarified the Creditors' Committee would like to keep the bankruptcy as simple as possible, emerge fairly quickly, and get a new board in place and empower that board to make these decisions.

Tom Power wanted to know how ring-fencing, or clarification of the PSC's authority on ring-fencing, could be in place in time to address the situation immediately after NWE emerges from bankruptcy. Commissioner Rowe referred to the process as "belt, suspenders, and suspenders," and felt if something solid could be agreed to in the bankruptcy court, he would like to have something filed with the PSC, so it is enforceable and reviewable. Commissioner Rowe felt it was imperative to clarify state law as to what authority the PSC has, but felt an agreement on this issue could be reached before the Legislature meets.

Chairman Hines wondered if the agreement they are trying to reach would be consistent with the recommendations of the Task Force. Commissioner Rowe replied they were generally consistent, but admitted he could not predict exactly where the negotiations would end up.

Mike Uda was under the impression the State had resolved the natural resources issue with Milltown Dam and had settled for \$130 million and wondered if that was just a placeholder in the event a final agreement is not reached. Chuck Swysgood replied it was simply a placeholder.

Chairman Hines understood the PSC is neutral as to what name will be on the trucks post-bankruptcy, but wondered how the PSC could make a comparison between the different

alternatives given the short time frame. Commissioner Rowe's position was a transfer of ownership would have to be examined by the PSC.

Mr. Beaudry felt deciding on financial feasibility should come before deciding whether ring-fencing will be in place, and did not feel that would be possible. Commissioner Rowe clarified they are so closely related, they try to do both at the same time.

Chairman Hines recalled an article stating NWE and the PSC were coming together on the ring-fencing issue, but NWE did not want it to be enforceable very far out into the future. Therefore, the agreement would be a bridge until when the Legislature would have a chance to act.

Energy Code Update and Low-Income Weatherization

- **Energy Code Adoption—Tim Lloyd, Department of Labor and Industry**

Tim Lloyd, acting Building Codes Bureau Chief, Montana Department of Labor and Industry (DLI), explained a Building Codes Council meeting will be held in conjunction with the public meeting on April 26, 9:00 a.m., 301 N. Park Street, in Helena. The Building Codes Council will be considering the adoption of the International Energy Conservation Code (IECC). Notice of the meeting and proposed adoption of the IECC has been mailed to all interested parties, and public comment will be heard at the meeting. Mr. Lloyd anticipated once approval is received, it will take two to four months to actually adopt the IECC since it is subject to the Montana Administrative Procedures Act (MAPA). Mr. Lloyd submitted the Notice of Public Meeting on Draft Rule Amendments with attached proposed administrative rule (Exhibit 1).

Chairman Hines thanked Mr. Lloyd for his work and explained there are two issues on Energy Codes: First, the position the Task Force would like to take on the level of energy efficiency measures it would like to see included in an updated building code; and second, the self-certification issue.

John Bushnell reported for the subcommittee appointed by the Task Force to look at Building Codes and energy efficient measures related to low-income consumers. Mr. Bushnell submitted a paper on energy efficient issues (Exhibit 2). Mr. Bushnell asked the Task Force to determine whether it would like to participate in the DLI's administrative process at the hearing and in adopting a Code. Mr. Bushnell referred the Task Force to Table 1 of Exhibit 2, and asked the Task Force to notice there are several measures which go beyond the 2003 IECC that are cost-effective and the Northwest Power Conservation Council (NWPCC) is looking at formulating a recommendation for this region. Specifically, the recommendation is floor over unheated spaces going to R-30, and basement wall going to R-19. Mr. Bushnell commented for

slab-on-grade, he did not have full information from Tom Eckman, but NWPCC's proposal is an upgrade to R-10. Mr. Bushnell added stated there are additional cost-effective measures that can be taken for electric zone-heated homes. Additionally, the Task Force will need to recommend whether to continue the basement exemption, which states a basement does not have to be insulated as long as it is unfinished, and the Code only becomes applicable when the basement is finished.

Mr. Power asked if the basement is unfinished and the walls are not insulated, whether that makes it an unheated space. Chairman Hines clarified a vent system running through a basement would make it a heated space. Mr. Bushnell added it was his understanding the vent work could run in the basement, but the basement exemption would still apply.

Paul Tschida, Montana Department of Environmental Quality (DEQ), explained the current exemption states basements do not have to be insulated until it is finished for occupancy and does not deal with heating sources. Typically, if the furnace and duct work are located in a basement, the basement will be somewhat heated. Mr. Tschida explained the definition of "unheated" is 55 degrees or below. However, currently a basement does not have to be insulated until it is finished for occupancy.

Chairman Hines noted that there were two important questions to be answered before considering an additional measure. The first measure is that they are considering common building practices that vary by region. Chairman Hines sensed the full 10 under slab is not a common building practice.

Mr. Bushnell understood full 10 under slab would be a fairly controversial measure because it is not common practice in Montana, and the analysis provided in Exhibit 2 is for Montana. In addressing basement walls, Mr. Bushnell felt a 2 X 6 wall would provide R-19 with conventional fiberglass insulation.

Mr. Tschida testified the majority of basements in the state are insulated. The most common is a 2 X 4 wall with an R-11 bat in the space. Mr. Tschida estimated the cost would be an additional .25 per square foot. Mr. Bushnell stated it would be cost-effective and would increase the net present value to the buyer. Mr. Tschida added the cost of insulating a basement is controversial and wide-ranging since it could or could not include wiring, plumbing, and sheet rock. Chairman Hines added that is why there is an exemption for requiring a basement to be insulated since "completion" could encompass a broad array of levels.

(Tape 1; Side B)

Mr. Uda wondered if the Task Force would be recommending eliminating the exemption for basements. Rep. Olson responded no, and Mr. Uda inquired if the subcommittee was making a recommendation. Mr. Uda recalled the basement exemption as the issue the industry was most concerned about. Mr. Uda recognized the balance between maintaining affordable housing and not imposing undue restrictions and burdens on contractors while giving people a home that will provide long-term value. Mr. Uda was in favor of keeping the basement exemption until more analysis can be performed.

Mr. Power's recollection was the information would be forwarded to the Department of Labor and Industry about what was and was not cost effective. Mr. Power stated while no one wants to increase the cost of housing, it is not true the measure will make housing less affordable; but rather, would make housing more affordable in the long term. Mr. Power felt it would be worth applying pressure so these energy-saving measures would be given serious consideration. Dr. Power felt the information provided by DEQ and NWPCC should be forwarded to DLI.

Mr. Uda explained the subcommittee understood it was to submit comments and forward the results of the analysis. The only controversial item would be the question about the exemption for basement walls. Mr. Uda did not have any problem forwarding the cost-effective information to DLI, but was not comfortable making a recommendation on the basement wall exemption.

Chairman Hines summarized there was no opposition to forwarding the information from the joint study and NWPCC work, and asked if the Task Force wanted to make a specific recommendation on any of the other measures, beside the basement wall issue. This would mean the floor-over-unheated-space issue and the finished basement wall.

Mr. Bushnell understood the results of the joint study will be presented at the meeting. Mr. Tschida explained they will be considering the 2003 Energy Code with the exemption in place. During the next year, they hope to work with the builders in the state to come up with other means of insulating basements that are cost effective.

Chairman Hines inquired if they would be recommending an increase to what the counsel said was cost effective going from 21 to 30 on floor-over-unheated spaces. Mr. Tschida believed they were proposing to adopt the 2003 Energy Code.

Mr. Chuck Swysgood commented many people are initially uncertain as to what they are going to do with their basement. Mr. Swysgood assumed there is a valid reason why people do not insulate from the start. Mr. Tschida responded 20 percent of the basements have foam foundation systems that have foam on both sides. Mr. Tschida noted this makes construction a little more difficult and the majority of builders do not use this as common practice.

Mr. Uda recalled the subcommittee's initial recommendation as being to forward to DLI the cost-effective studies performed by Tom Eckman. Mr. Power added his concern was the issue needed to be more fully explored and noted he has seen increasing amount of insulation used commercial buildings.

Commissioner Rowe commented it might be a matter of training. Commissioner Rowe summarized the subcommittee's recommendation as having the Task Force endorse the NWPCC study results with the exception of calling for further workshops on cost-effective basement insulation.

Mr. Bushnell noted the Task Force has been acting at a working group for the ETIC and needs to decide whether to formally submit the results of the joint study to the ETIC. The Task Force agreed a summary report outlining its activities should be forwarded to the ETIC.

- **Self-Certification**

Mr. Bushnell explained the Montana Code is required state wide and enforced in municipal jurisdictions whether they choose to enforce it. Other than those jurisdictions, the Code is enforced by self-certification of the homebuilder by placing a sticker on the panel. The subcommittee has determined self-certification is only occurring approximately 40 percent of the time and felt there should be increased awareness that certification is required by statute. Mr. Bushnell presented a sticker to the Task Force (Exhibit 3). Mr. Bushnell suggested the State Electrical Inspector, who has to inspect every house, could be responsible for placing the blank sticker on the panel box. Mr. Bushnell thought this may increase education and awareness for the home builder and the eventual homeowner.

Mr. Lloyd understood legal counsel for the Bureau had recommended against having the State Electrical Inspectors place the sticker on the panel, but was unclear as to the reasoning behind that recommendation. Mr. Power wondered if the statute were changed to allow the State Electrical Inspector to place the sticker whether there would still be a problem. Mr. Lloyd replied they will comply with what is required in the law. Mr. Lloyd stated currently the stickers are available from the Building Codes Bureau and DEQ, but admitted they do not receive many requests for the stickers. Rep. Olson wondered if the sticker could be included with an electrical permit. Mr. Lloyd replied many times the electrical contractor takes out the permit, and the sticker should go to either the general contractor or the homeowner.

Chairman Hines asked Mr. Lloyd whether the existing statute, at a minimum, provides an obstacle for the sticker to be put on by the State Electrical Inspector. Mr. Lloyd recalled that as the case.

Mr. Swysgood stated with only 40 percent compliance, it would not matter who places the sticker on the panel box, and they cannot enforce the current statute.

Mr. Uda explained the main reason the subcommittee discussed this issue was not because they thought they could get higher enforcement, but because it would provide the homeowner with additional information about energy-efficient construction.

Commissioner Rowe could not see any liability to the Electrical Inspector for placing the sticker on the panel box. Commissioner Rowe also felt the sticker should be larger.

Mr. Uda added the subcommittee discussed placing DEQ's website address on the sticker so people could find out more information about conservation measures for new family construction. Commissioner Rowe agreed information should be made available to both builders and homeowners, and suggested the sticker should be included with the building permit.

Chairman Hines identified the sticker as one vehicle for creating consumer awareness on the effectiveness of energy conservation and suggested this will become a more critical issue for homeowners as the cost of energy rises. Chairman Hines added having the sticker in place will enable the homeowner to request the contractor to fill out the sticker, and the homeowner could then use the sticker as a selling point to potential buyers. This could result in developing a demand for a certain level of energy efficiency in a relatively inexpensive manner.

Mr. Beaudry spoke about the difference between self-certification and voluntary compliance. Mr. Beaudry suggested the State could make banks and insurance companies aware it is a State requirement that must be complied with before building or insuring a house.

Mr. Bushnell restated the subcommittee's intention to create an opportunity for the builder to have the sticker in place and to create a demand pull for energy efficient homes. Mr. Bushnell did not feel the home would be self-certified until the sticker was filled out and signed and, therefore, did not feel liability would change. Mr. Power felt that since the law states the general contractor or builder is supposed to place the sticker, the law would need to be changed to reflect the State Electrical Inspector is to place the sticker.

Chairman Hines suggested a recommendation be submitted to the Governor that the existing statute is not being adhered to and the statute should be changed to reflect the State Electrical Inspector is responsible for placing the sticker.

Mr. Lloyd suggested having DLI look at the issue again and get clarification on the suggestion. Since the Task Force may not be meeting again, Chairman Hines suggested the DLI's analysis should be provided to ETIC.

Mr. Beaudry suggested the utility that provides gas and electrical service could also help ensure the sticker is in place and filled out. The Task Force agreed with Mr. Beaudry's suggestion.

- **Mobile Home Replacement Trade-In**

Mr. Bushnell reminded the Task Force this program was introduced by Tom Eckman at the first meeting of the Task Force. The large number of energy inefficient older mobile homes is problematic. It costs about \$2,600 per unit to weatherize these homes. There have been suggestions that it would be better to take the \$2,600 and help buy down the cost of a new energy-efficient mobile home of similar size. Barriers to this program include credit worthiness of the owner and dismantling the older mobile homes, most of which contain asbestos. The recommendation of the subcommittee is to have the Governor select a state agency to monitor what is happening in other parts of the country with other programs and look for opportunities to ride along with other federal programs to help overcome some of the barriers.

Mr. Power stated HUD is interested in this problem, but no solution is being offered at the current time. Mr. Power agreed it would be wise to monitor this in hopes an effective program were to be developed.

Mr. Uda added the subcommittee anticipated there would not be any funds available, but to request the Governor to have DEQ monitor the program in case there is an opportunity to fund a program. Commissioner Rowe felt the program was valuable, but noted many pieces would have to come together to implement such a program. Commissioner Rowe supported the idea of monitoring the situation so the idea does not fall through the cracks.

(Tape 2; Side A)

- **Recommendations of Energy Efficiency Subcommittee**

Chairman Hines summarized the Task Force will recommend the Governor request DEQ to continue with monitoring and to notify the appropriate entities if funding becomes available for a mobile home retirement program.

- **Public Comment on Energy Efficiency**

Chairman Hines solicited public comment on energy efficiency, and no public comment was offered.

Ring Fencing

- **Recommendations of Subcommittee on Electric Industry Structure**

Mr. Bushnell submitted the subcommittee's recommendations on ring-fencing to the Task Force (Exhibit 4). Mr. Bushnell noted the subcommittee is recommending any legislation be clear in its intent language that the legislation not weaken or restrict the PSC's existing authority. Mr. Bushnell reviewed the seven recommendations contained in Exhibit 4, and commented all the subcommittee's recommendations are aimed at regulated energy utilities, which would include those companies regulated by the PSC to distribute electricity or natural gas.

Chairman Hines asked if recommendation number seven which refers to a customer base of 1,000 was a specific caveat or allowance for the forbearance and whether it was an automatic exemption. Mr. Bushnell recalled the subcommittee's intent was it would provide good cause to go before the PSC and ask for forbearance. Commissioner Rowe clarified a base of less than 1,000 would be one basis upon which a company could request forbearance. There are a number of small companies operating in Montana that stand alone, and the subcommittee was concerned about companies that may have large presences elsewhere, but have a small number of customers in Montana. Commissioner Rowe stated the subcommittee included the forbearance language because they had a sense most of the requirements would be achievable by most of the energy utilities, but not all, and cited Montana Dakota Utilities (MDU) as an example.

Mr. Power expressed concern about the first recommendation and assumed the intent of the first recommendation was not to forbid the parent company from engaging in unregulated risky operations that could lead to a downgrading of its credit quality and indirectly affect the credit quality of the regulated utility.

Chairman Hines clarified the intent is to insulate the regulated utility and its credit from actions of the parent company. The subcommittee did not feel it was the wish of the Task Force to recommend regulating the parent company's actions, but rather to provide sufficient protection from those actions, so they do not flow down to the regulated utility.

Mr. Power wanted to ensure the recommendation is phrased correctly so it is not too broad in the other direction and would suggest the PSC would be attempting to regulate the parent company.

Mr. Swysgood asked if the Task Force would be recommending legislation for each of the seven items or if the Task Force would select the best item that would protect the utility from the actions of a parent company. Chairman Hines explained the intent is to provide a package that would serve as foundation for legislation.

Rep. Olson and Mr. Swysgood commented they have problems with item six and stated they would be opposing that recommendation.

Mr. Bushnell submitted written comments from Harley Harrison, MBIA Insurance Corporation, to the Task Force (Exhibit 5).

Chairman Hines explained there could be a triggering mechanism that would allow or require the PSC to step in and implement a ring-fencing package. The subcommittee felt any triggering mechanism would probably be too late to provide effective ring-fencing. Chairman Hines admitted the subcommittee experienced problems in developing a workable triggering mechanism. The subcommittee formed a list of criteria, via legislative allowance, that would allow the PSC to be involved up-front.

- **Public Comment**

John Alke, representing Montana Dakota Utilities, had very serious concerns with item Nos. 6 and 1 of the ring-fencing proposal.

In addressing Item No. 6, Mr. Alke explained MDU is a highly diversified company and approximately 12 percent of the company is the utility. The PSC currently has jurisdiction over three percent of MDU's revenue. In applying Item No. 6 and the remedy provisions, the PSC could order MDU to sell its assets. In MDU's situation, the parent entity is the utility and the most significant assets owned by the parent are the non-regulated assets. Therefore, Item No. 6 could allow the PSC to order MDU to issue stock and reduce its debt. Mr. Alke felt this was unreasonable since the PSC only has authority over three percent of MDU's revenue, and noted there are other states that have an equal, if not greater, stake in the financial interests and integrity of MDU. Mr. Alke identified suspension of dividend payments as one the core functions of the management of MDU, and noted regulatory authorities, such as the PSC, have no control over the management of a company, and can only regulate the public interest matters vested within their authority.

In addressing Item No. 1, Mr. Alke had no objection to the second sentence, but did object to the first sentence which requires PSC approval for all affiliated transactions between a regulated energy utility and an affiliate interest. In reading that sentence in conjunction with the definition of "affiliate interest," Mr. Alke understood this sentence to include employees and the wages it pays to those employees. Mr. Alke also noted the definition of "affiliated transaction," and felt the definition was not clear. Mr. Alke felt the recommendation as presented would require MDU to obtain PSC approval to enter into any gas transaction. Mr. Alke felt the reference in the definition of "affiliated transaction" to the activities between accounts of the

regulated and non-regulated segments of a single public utility was designed to empower the PSC with the ability to prohibit MDU from servicing clients.

Mr. Alke concluded by stating MDU had no problem supporting reasonable legislation designed to protect the financial integrity of the utility, but felt strongly the proposal before the Task Force was not reasonable.

Mr. Uda wanted to know if Mr. Alke's problem with the first sentence in Item No. 1 was not only with its broad scope, but also because it would be over-burdensome. Mr. Alke absolutely agreed stating the first sentence created a command and control structure. Chairman Hines disagreed with Mr. Alke's command and control statement, and clarified the intent was to provide protection, and solicited assistance in drafting language that would monitor affiliate transactions, so they do not adversely affect consumers. Chairman Hines was adamant the intent was not to have the company managed by the PSC. Mr. Alke responded if the goal is to protect the public interest from risky transactions by a healthy utility, the goal could be accomplished simply by stating the prohibition and deleting the requirement for preapproval. Mr. Alke noted each of the first five recommendations began with the language "Require PSC approval . . ." Mr. Alke felt this language would lend to the command and control structure.

Mr. Power asked Mr. Alke if all the items listed that require PSC approval were preceded by the second condition and stated, "If the PSC were to find . . ." Mr. Alke did not agree to the change since it would still require filing for pre-approval. Mr. Alke asked the Task Force to keep in mind the primary function of the PSC is not to manage and control companies, but to regulate rates and services for the public interest.

Mr. Power noted one of the other functions of the PSC is to protect customers against risky decisions or speculative ventures that utilities may get into on the unregulated side that may have catastrophic consequences for the customers of the regulated utility. Mr. Power felt the PSC needed to be in a position to prevent the utility and its parent from acting in a way that damages the regulated utility and its customers.

Mr. Alke disagreed and stated ring-fencing is attempting to prevent a utility from using the utility and its assets to fund risky ventures that may harm the utility customer. Mr. Alke suggested the PSC already has authority of the issuance of stocks and bonds and in the case of a company investing retained earnings while keeping the investment intact on the utility side, Mr. Alke stated a company can do whatever it wishes with those retained earnings. Mr. Alke clarified he does not oppose recommendation No. 4, which prohibits pledging utility assets, and felt that was a reasonable ring-fencing mechanism. However, telling a company what to do with dividends and how much it should declare falls within the realm of command and control and not regulation.

In addressing recommendation No. 6, Mr. Uda was curious whether it was the remedies that were bothersome or whether it was the idea of the PSC being able to dictate the level of equity in the company. Mr. Alke suggested deleting the first sentence of recommendation No. 1 and deleting all the remedy provisions of No. 6, and making the definition of "affiliate transaction" reasonable.

Commissioner Rowe commented the working group was attempting to craft language responsive to concerns expressed by Mr. Alke, and Mr. Alke somewhat agreed noting words were added since the working group met that made the language worse. Mr. Alke stated he respects the work being done and the challenges it presents, but stated MDU is the only remaining healthy utility doing business in the state of Montana, and it would be the company most adversely affected by the proposed recommendations. Chairman Hines commented the Task Force was attempting to help MDU remain a healthy utility.

John Fitzpatrick, NorthWestern Energy, stated he has not reviewed the recommendations in detail and agreed with testimony provided by Mr. Alke. Mr. Fitzpatrick testified that when NWE emerges from bankruptcy, it will be very different from MDU, but will still share common concerns. Mr. Fitzpatrick did not agree with the definition of "affiliate interest," and explained how the language could impact NWE's ability to assist smaller companies within NWE. Mr. Fitzpatrick felt recommendation Nos. 2 and 3 were not problematic, but felt they could be more tightly focused.

(Tape 2; Side B)

Mr. Fitzpatrick also indicated the term of 120 days in recommendation No. 5 may not be appropriate. Mr. Fitzpatrick disagreed with the remedies required in recommendation No. 6. Mr. Fitzpatrick noted the need for a balance between protecting customers and investors. Mr. Fitzpatrick agreed with Mr. Alke's suggestion of using language that simply prohibits certain activities. Mr. Fitzpatrick stated NWE believes the PSC operates under a double standard and would oppose any statute that would grant substantial discretion to the PSC.

Commissioner Rowe felt some of Mr. Fitzpatrick's concerns could be addressed under the exemptions clause, and Mr. Fitzpatrick replied that at the present time, it is unclear whether they would or would not, and clarified his concern is with the last part of recommendation No. 6.

Carl Schweitzer represents small Montana businesses that feel very threatened by MDU. Mr. Schweitzer felt there are three different groups ring-fencing should be concerned with, including ratepayers, investors, and small businesses who compete with the utility. Mr. Schweitzer was concerned because there is no separation of the utility people from the affiliate people. While Mr. Schweitzer could not be certain unfairness exists, he was certain there is a

perception of unfairness.

Commissioner Rowe asked whether Mr. Schweitzer felt language has been added at his request that would benefit the people he represents. Mr. Schweitzer replied he had not asked for any specific language.

Eric Eck, Montana Public Service Commission, commented that there is a benefit to utilities having affiliated transactions reviewed by the regulator since it provides utilities with an understanding of what will pass regulatory muster. Mr. Eck thought it would be beneficial for a utility to know up front how to proceed. Mr. Eck commented he was cognizant about the concerns expressed with recommendation No. 6 and suggested rather than saying the PSC could issue an order, the company could supply an explanation to the PSC on why equity will be increasing.

Chairman Hines asked Mr. Eck about the definition of "affiliate interest" and "affiliated transaction." Mr. Eck suggested alternate language could be looked at and the definitions could be worked on.

- **Task Force Discussion of Options for Recommendations to Governor and ETIC**

Mr. Power thought conditioning or triggering has been discussed, and he did not believe the PSC would ever want to review each and every affiliate transaction. Mr. Power stated the intent of the language was not to micro-manage utility companies, but to make clear the PSC has authority to act when actions being taken by affiliates or the regulated utility itself threaten the financial viability of the regulated utility.

Mr. Bushnell commented that in putting together the information he had two approaches, including a broad general approach and then the triggering approach. The subcommittee was unable to identify any easily measurable triggering events that would be beneficial to a utility before it is too late.

Mr. Uda commented the trigger mechanisms were very difficult to identify without initially giving the PSC some authority up-front.

Mr. Power suggested the PSC would have to make a finding that financial viability is at risk, and having a statement that all affiliate transactions need PSC approval is not desirable. Mr. Power thought the PSC should only have authority if the regulated utility is being put at risk.

Chairman Hines thought some of the parties wanted a clear road map on when their actions would be subject to review. Chairman Hines felt the subcommittee found it was easier to come up with a prescriptive before-the-fact basis for evaluation as opposed to a subjective basis. Mr. Uda commented the subcommittee attempted to suppress the PSC's review of immaterial transactions, but agreed they had not pitched the issue exactly right.

Commissioner Rowe felt the triggering was problematic since it provides less certainty and information would have to be developed to know whether the trigger would fire. Commissioner Rowe warned that sometimes by the time the trigger fires, it is too late. Commissioner Rowe felt it made more sense to carve out transactions that the PSC should not be concerned about. Commissioner Rowe was encouraged with the amount of the recommendations not being opposed and thought Exhibit 4 would be a good document to work off of, noting the definitions and exceptions need work, as does the last part of recommendation No. 6. In addition, Commissioner Rowe admitted he understands the concerns with the first sentence of recommendation No. 1, but felt strongly there needs to be protection for customers.

Mr. Swysgood felt it was a good idea to go back to the original goal of ring-fencing and what it will take to accomplish that goal without being overbearing. Mr. Swysgood did not feel the PSC should have any more control than necessary to accomplish the goal of ring-fencing and ensure stability in the cost of electricity and gas to consumers and ensure quality service. Mr. Swysgood applauded the subcommittee for its work.

Chairman Hines summarized the document is a foundation and is a work-in-progress and will be continuously worked on based on testimony and opinions expressed by Task Force members.

Mr. Beaudry agreed and suggested the best way to handle ring-fencing is to make certain activities illegal without PSC approval. Rep. Olson agreed this would take pressure off the PSC to pre-approve numerous transactions.

Mr. Swysgood suggested the second part of recommendation No. 1 goes along way in saying what is desirable and could be the basis for a new recommendation. Chairman Hines asked the subcommittee to address whether the recommendations should be more open-ended or more prescriptive.

Mr. Uda noted the PSC would not want to be approving routine transactions. Mr. Uda recognized Mr. Alke and Mr. Fitzpatrick are concerned about the PSC expanding its authority and that is why they would like to see the emphasis on statutory prohibitions. Mr. Uda thought the Task Force should consider whether it is appropriate to give the PSC latitude or whether they want to confine the PSC's authority to a narrow set of circumstances. Commissioner Rowe

responded typically the utility feels pinched when the statute is narrow, so the law needs to be in place for situations nobody can anticipate.

Commissioner Rowe noted Mr. Schweitzer's concern about the lack of focus on competitors or investors. Mr. Uda stated he is aware of allegations by HVAC contractors and others that utilities are in some way using their utility status to gain competitive advantage, but it was not his understanding the issue would be addressed by the subcommittee.

Mr. Power suggested the Task Force look at its original charge from the Governor, and felt the PSC will continue to wrestle with the issue of how regulated monopolies impact competitive firms.


There being no further business to come before the Task Force, the meeting adjourned at 12:30 p.m.

APPROVED AS TO FORM AND CONTENT:

By: _____
John Hines, Chairman

TRANSCRIPTION CERTIFICATION

I, Cynthia A. Peterson, residing in Helena, Montana, do hereby certify that the foregoing pages constitute a true and accurate transcription, to the best of my ability, of audio cassette Nos. 1-2 of the April 23, 2004, meeting of the Governor's Consumer Energy Protection Task Force.



Cynthia A. Peterson, PLS

AGENDA

Governor's Consumer Energy Protection Task Force*

April 23, 2004

9:30 AM – 12:00 PM

Room 102, Capitol Building

1. Welcome and introductions.
2. Energy code update and low-income weatherization.
 - Energy code adoption - Tim Lloyd, Department of Labor and Industry
 - Recommendations of energy efficiency subcommittee
 - Cost effectiveness study
 - Mobile home trade-in
 - Self certification labeling
 - Task Force decision
3. Ring fencing.
 - Recommendations of subcommittee on electric industry structure
 - Task Force discussion of options for recommendations to Governor and ETIC
 - Task Force decision
4. Future work plan and meeting dates.
 - Task Force discussion

* Opportunity for public comment will be provided during each agenda topic.